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SENATE

REPORT
101-78

AUTHORIZING APPROPRIATIONS FOR FISCAL YEARS 1990 AND 1991 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM [CIARDS], AND FOR OTHER PURPOSES

JULY 14, 1989 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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Mr. BOREN, from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 1324]

The Select Committee on Intelligence, having considered the orignal bill (S. 1324) authorizing appropriations for fiscal years 1990 and 1991 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill would:

(1) Authorize appropriation for fiscal years 1990 and 1991 for (a) intelligence activities of the United States, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(2) Authorize the personnel ceilings as of September 30, 1990 and September 30, 1991, respectively, for (a) the Central Intelligence Agency, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(3) Authorize the Director of Central Intelligence to make certain personnel ceiling adjustments when necessary to the performance of important intelligence functions; and

(4) Make several legislative changes designed to enhance intelligence and counterintelligence capabilities and to promote more effective and efficient conduct of intelligence and counterintelligence.

29-010

S423-1

OVERALL SUMMARY OF COMMITTEE ACTION

[In millions of dollars]

	Fiscal year request		Committee recommendation	
	1990	1991	1990	1991
Intelligence activites	(1)	(1)	(1)	(1)
IC staff	24.1	24.4	25.068	24.931
CIARDS	154.9	164.6	154.9	164.6

[1] Classified.

The Classified Supplement to the Committee Report

The classified nature of U.S. intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to the Report, which describes the full scope and intent of its action. The Committee intends that the classified supplement, although not available to the public, will have the full force of a Senate Report, and the Intelligence Community will fully comply with the limitations, guidelines, directions, and recommendations contained therein.

The classified supplement to the Committee Report is avilable for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

Scope of Committee Review

The Committee conducted a detailed review of the Intelligence Community's budget request for Fiscal year 1990 and 1991. This review included more than 30 hours of testimony from the principal program managers for the U.S. Intelligence Community, including the Director and Deputy Director of Central Intelligence; the Director, Natonal Security Agency; the Director, Defense Intelligence Agency; the Director of the Federal Bureau of Investigation; and various senior intelligence officials of the Department of Defense.

In addition, the review included examination of over 3,000 pages of budget justification documents, as well as a review of written answers submitted by such officials in response to questions for the Committee record.

In addition to its annual review of the Administration's budget request, the Committee also performs on a continuing basis oversight of various intelligence activities and programs. This process frequently leads to actions with respect to the budget of the activity or program concerned which are initiated within the Committee itself.

Importance of Intelligence in a Changing World

During the last year, the world has experienced widespread and dramatic changes: the emergence of democratic reforms within the Communist Bloc, the willingness of the Soviet Union to negotiate military reductions, the upheavals and repression in China, the

withdrawal of Soviet troops from Afghanistan, the change in leadership in Iran, the end of the civil war in Angola, and the announced withdrawal of the Vietnamese from Cambodia, to suggest but a few.

Such changes underscore two points. First is the need for the United States to maintain an intelligence capability which permits it to anticipate and understand the nature and significance of such change. Second is the need within the U.S. Intelligence Community itself to be able to adjust to these developments. Such adjustments must not be confined simply to gathering information on new areas of interest, but must include adjusting one's previously-held analytical assumptions as well in terms of what such changes mean. Indeed, how well the Intelligence Community helps U.S. policymakers appreciate and respond to potentially far-reaching change around the world could, in some large measure, determine the extent to which the United States is itself able to shape such events in the interests of a safer and freer world.

The Committee has, and will continue to, evaluate the performance of the Intelligence Community in this regard during the forthcoming fiscal year.

Congressional Oversight of Intelligence Activities

Last year, the Committee reported S. 1721, which was a comprehensive revision of the Intelligence Oversight Act of 1980. The Senate passed the bill on March 15, 1988, by a vote of 71–19. The bill never came to a vote in the House of Representatives, however.

The Committee has thus far not considered the bill in this Congress, opting instead to attempt to reach an agreement with the new Administration on the reporting of covert actions to the two Intelligence Committees. It has been a matter of continuing concern, in fact, to the Committee that the understandings upon which the 1980 oversight statute were based be reaffirmed by the Bush Administration.

In the absence of such agreement, however, the Committee would be obliged to reconsider the previously-reported legislation. Indeed, even if agreement were reached on the reporting of covert actions, it may be desirable to consider enactment of those portions of the oversight legislation developed in 1988, which had been agreed to by both sides.

Insofar as the Committee's oversight activities were concerned, the Committee continued to focus on ongoing covert action programs. Making particular use of its internal audit team, established in 1987, the Committee was able to track developments in these programs on a continuing and detailed basis.

The Committee also continued to monitor the operations of the Inspector General at CIA. The Committee received its first report from the Director under the statutory provisions enacted in the Fiscal Year 1989, and it has monitored the performance of the Inspector General's office in several specific inquiries. The Committee continues to be concerned that such an arrangement may not be providing the effectiveness and objectivity necessary for this function.

Assistant Secretary of Defense for Intelligence

In the FY 1989 Intelligence Authorization Act, Congress permitted the Secretary of Defense, if he chose to do so, to use one of the existing statutory allocations for the creation of a new Assistant Secretary of Defense for Intelligence. Citing the strong preference of both congressional intelligence committees for the establishment of this position, the conference report required the Secretary of Defense to report his decision to the two committees by March 1, 1989.

Secretary Richard Cheney reported to the Committee in a letter dated May 31, 1989, that he had decided not to utilize the statutory authorization at this time, but rather to create a position on his staff of Assistant to the Secretary of Defense for Intelligence Policy. This official would be charged with the review and coordination of all parts of DOD's intelligence and counterintelligence programs.

The Committee respects the Secretary's decision although it would have preferred the creation of a new Assistant Secretary. Indeed, it is unclear to the Committee how the new Assistant to the Secretary will be able to coordinate and control programs which are under the ostensible control of higher-ranking officials on the Secretary's staff. Nonetheless, the Committee is willing to wait and see whether this arrangement proves workable. If it does not, the Committee will reconsider a legislative solution.

Counterintelligence and Security

The Committee continued during the last year to track closely developments in the counterintelligence and security area, focusing heavily upon actions being taken to improve the security of U.S. diplomatic establishments abroad. In general, while we found that much had been accomplished since 1985–86, the "year of the spy", we found much was left to do.

We also found that the incidence of espionage, despite these efforts, had not abated, either in terms of their number or their seriousness. Since its 1986 report on "Meeting the Espionage Challenge", the Committee has catalogued numerous cases of espionage and attempted espionage, some of which had devastating consequences for the United States. We also found that many of the actions set in motion in early years were faltering as a result of diminishing resources and a lack of continuing resolve to deal with them effectively.

To provide greater public awareness of this threat and the effectiveness of the actions being taken by the Government to cope with it, the Committee intends to issue later this year a sequel to its 1986 report.

Security Evaluation Office

The Committee specifically authorizes $4.5 million for the Security Evaluation Office (SEO) which is directly responsible to the Director of Central Intelligence and provides support to the Secretary of State in protecting United States diplomatic missions abroad from foreign intelligence threats. The Committee believes a cooperative effort between the State Department and the U.S. Intelli-

gence Community is essential to respond to the grave deficiencies in embassy security that have come to light in recent years.

Those deficiencies have not been rectified, and the State Department has been derelict in failing to implement actions that are indispensable for the protection of U.S. diplomatic facilities. Our nation faces well-organized and sophisticated intelligence adversaries who have proven their ability to defeat the Department's inadequate defenses. Improvements appeared possible last year, including reconstruction of the new Moscow Embassy building and closer cooperation between the State Department and the Intelligence Community, but progress has virtually come to a halt. In the case of the new Moscow Embassy, the prospects are for reversal of the decision by Secretary Shultz and President Reagan to reconstruct the entire building. Reversing that decision would invite another security disaster and confirm signs that the Executive branch is incapable of effective action in this field. The President and the NSC, as well as the Secretary of State and the DCI, would share responsibility for such an unfortunate outcome.

In 1987, the Committee issued a report on "Security at the United States Missions in Moscow and Other Areas of High Risk." The Committee concluded that the State Department lacked "a systematic, stringent security program to detect and prevent Soviet technical penetration efforts" and that there were "basic flaws in State Department security organization and practices." The history of the new Moscow building was "a text book example of bureaucratic inertia, turf warfare, and inadequate coordination."

To address these problems, the Committee made a series of recommendations, including demolition and reconstruction of the new Moscow building and increased involvement of the U.S. Intelligence Community in the protection of embassy security against the foreign intelligence threat. The DCI was requested to certify the security conditions of Embassy facilities; and the Committee proposed that the Secretary of State and the DCI convene an expert panel to review "the plans, contracts, and protocols" for new Embassy projects in Moscow and Eastern Europe and made recommendations "to protect the integrity of all new Embassy projects."

Studies commissioned by the Executive branch reached similar conclusions. The Inman Panel in 1985 highlighted the systematic weaknesses brought to light by Soviet bugging of Moscow Embassy typewriters. In 1987, Secretary Schlesinger documented the flaws in the process of constructing the new Moscow building, and Secretary Laird's panel identified security weaknesses that contributed to the KGB's ability to recruit Sergeant Lonetree and made the Moscow Embassy highly vulnerable to other compromises. The President's Foreign Intelligence Advisory Board made further recomendations.

Upon the completion of these studies in mid-1987, the Administration developed specific measures to improve embassy security against the intelligence threat. None of those measures has yet been implemented. They included the dismantlement and reconstruction of the new Moscow building, Undersecretary-level status for the Director of Diplomatic Security in the State Department, and establishment of an organization under the DCI to bring together

security experts from the Intelligence Community and the State Department.

In 1988, the DCI established the Security Evaluation Office to implement the latter measure, but it has failed to achieve its objectives. The State Department has not cooperated with the new Office, either by assigning necessary personnel or by integrating SEO's work into the embassy security process. While the State Department Inspector General has expanded its security inspections with interagency involvement, the Department remains unwilling to support SEO. The Intelligence Community, for its part, also bears a share of responsibility for SEO's present ineffectiveness, having been unwilling to recognize and meet legitimate State Department concerns on certain matters. This bureaucratic infighting has not been helpful in resolving the difficult problems which plague the security of U.S. diplomatic establishments.

The Committee believes close cooperation between the State Department and the Intelligence Community is essential in developing and implementing measures to protect U.S. Embassies from the intelligence threat. In the case of the new Moscow Embassy building, for example, the Intelligence Community should be a full participant in all significant policy decisions, not just the decisions affecting the Intelligence Community's own interests. SEO should provide a systematic means to bring to bear on embassy security problems the Intelligence Community's unique capabilities for evaluation of threats, vulnerabilities, and countermeasures.

To ensure that the intent of Congress is clearly understood, the Committee has decided to fund the Security Evaluation Office in the unclassified budget for the Intelligence Community Staff. The $9 million request for SEO has been reduced to $4.5 million because of the lack of cooperation demonstrated by both State Department and the Intelligence Community, but this is not intended to indicate and lack of Congressional support for an organization such as SEO within the Intelligence Community. The Committee is prepared to reconsider this reduction if agreement is reached on cooperation between the State Department and the Intelligence Community through SEO. In this regard, the Committee urges the Intelligence Community to do everything possible to respond to State Department needs.

INTELLIGENCE AUTHORIZATION ACT, FISCAL YEARS 1990 AND 1991

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

TITLE I—INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence activities the Act authorizes appropriations for Fiscal Years 1990 and 1991.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence activities and personnel ceilings covered under this title for Fiscal Years 1990 and 1991 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in Fiscal Years 1990 and 1991 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 102 and 202 by an amount not to exceed two percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

Section 104 amends section 502 of the National Security Act of 1947 (50 U.S.C. 414) by adding a proviso at the end of subsection (a)(2) which provides that the CIA Reserve for Contingencies may not be used to fund new covert actions, or significant changes to ongoing programs, for which prior notice has been withheld by the President from the two Intelligence Committees.

Existing law is unclear on this point. Subsection 502(a)(2) currently requires that the Director of Central Intelligence, "consistent with the provisions of 501 of th[e] Act concerning significant intelligence activities," advise the Intelligence and Appropriations Committees of each House of his intent to fund such activities from the CIA Reserve for Contingencies.

The Committee was concerned that this language could be interpreted to mean that the CIA Reserve for Contingencies could be used to fund a covert action program for which prior notice has been withheld by the President. Since section 501 of the National Security Act of 1947 permits the President to withhold prior notice, and the DCI's obligation to advise the Congress of release from the Reserve is conditioned upon consistency with section 501, the possibility arises that the two might read as providing an exception to the prior notification requirement for a Reserve release.

It is the intent of Section 104 to make clear that the CIA Reserve for Contingencies may not be used to fund any new covert action program, or any significant change to an ongoing program, for which prior notice has been withheld from the Intelligence Committees.

The language in this section pertaining to "significant changes" in ongoing covert action programs is not intended to impose any additional reporting requirement beyond existing law and practice. The President currently approves "significant changes" to ongoing covert programs in the form of "Memoranda of Notification", or "MON's", which are provided in advance of their implementation to the two Intelligence Committees. It is the intent of section 104 to preclude the use of the Reserve for Contingencies to fund new or additional covert activities authorized by the President which have been withheld from the two Intelligence Committees.

TITLE II—INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations in the amount of $25,068,000 for the staffing and administration of the Intelligence Community Staff for Fiscal Year 1990 and $24,931,000 for Fiscal Year 1991.

Section 202 provides details concerning the number and composition of Intelligence Community Staff personnel.

Subsection (a) authorizes full-time personnel for the Intelligence Community Staff for Fiscal Years 1990 and 1991, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes Fiscal Year 1990 appropriations in the amount of $154,900,000 for the Central Intelligence Agency Retirement and Disability Fund for Fiscal Year 1990 and the amount of $164,000,000 for Fiscal Year 1991, including $4.5 million for the Security Evaluation Office.

TITLE IV—CENTRAL INTELLIGENCE AGENCY ADMINISTRATIVE PROVISIONS

Section 401 requires a participant in CIARDS to complete within the last two years before retirement one year of qualifying service before becoming eligible for an annuity.

Current Civil Service Retirement System (CSRS) legislation requires that an individual spend one out of their last two years prior to retirement in an active pay status. The CIA Retirement Act (CIARDS) has no similar provision, thus an individual can be in a "When Actually Employed" status or "Leave Without Pay" status for an extended period of time and retain eligibility to retire. This legislation will resolve this anomaly and put CIARDS in conformance with CSRS. An Executive Order to conform CIARDS and CSRS would not be appropriate in this instance since the CSRS provision in question has been in existence since 1956 and conforming Executive Orders are authorized only with respect to legislation since 1975.

Section 402 clarifies language in the Intelligence Authorization Act of 1988 concerning death in service benefits. Under this legislation, a qualified former spouse is eligible for a pro-rata death in service benefit. In legislation passed in FY 1987 this same spouse, if divorced prior to November 15, 1982, is also entitled to receive the maximum (55 percent) survivor annuity. Neither piece of legislation addressed dual entitlements. Both acts, read together, would

allow a qualified former spouse who is under the age of 50 to receive a pro-rata share survivor benefit and upon reaching age 50 to receive a maximum survivor benefit (55 percent). In order to preclude paying dual entitlements, Section 403 provides that the maximum survivor benefit authorized under Public Law 99–569 supersede death in service benefits which are authorized in Public Law 100–178 once the former spouse reaches age 50. The amendment is made retroactive to November 15, 1982, which is the effective date of section 402(a) of the FY 1988 Intelligence Authorization Act.

Section 403 of the bill amends the Central Intelligence Agency Act of 1949 to provide Agency employees in the Civil Service Retirement System and FERS performing qualifying service with the same disability and death in service benefits as those received by employees who qualify for CIARDS and the FERS-Special Category. The reason for this amendment is to provide Agency employees described above with the same level of benefits as those received by State Department employees in the Foreign Service Pension System or Foreign Service Retirement and Disability System.

The Foreign Service Pension System and Foreign Service Retirement and Disability System (FSRDS), unlike CIARDS and FERS-Special, do not have minimum time required to qualify to enter the System. Individuals in the Foreign Service Pension System or FSRDS serving overseas are covered by the enhanced disability and death in service benefits under those Systems while Agency employees serving overseas under the Civil Service Retirement System or FERS do not have these same benefits available to them because they have not completed five years of qualifying service. Section 403 is designed to remedy this inequality in treatment between CIA and Foreign Service employees.

Proposed Sections 18(a) and (c) of the CIA Act provide disability benefits to those Agency employees performing qualifying service who are in the Civil Service Retirement System or FERS that are equivalent to CIARDS and FERS-Special disability benefits. Qualifying service in most instances will be service overseas.

To qualify under Section 18(a), an Agency employee must have at least five (5) years of creditable service, not be designated into CIARDS, become disabled while performing qualifying service and be disabled in accordance with the criteria set forth in the Civil Service Retirement System. To qualify under Section 18(c) of the bill, an individual must have completed 18 months of service, not be designed into FERS-Special, be disabled while performing qualifying service, and satisfy the criteria for disability under FERS.

The impact of adopting Section 18(a) of the bill on the Agency population can be illustrated by comparing the differences in disability annuities under the Civil Service Retirement System and CIARDS. Under the Civil Service Retirement System and CIARDS, an individual is entitled to 40 percent of the average of the highest three years of his salary if disabled. There is, however, an alternative method for calculating a disability annuity. This alternative method is based on the number of years of service multiplied by the average of the employee's highest three years of salary in determining the disability annuity. If the alternative method for calculating a disability annuity exceeds 40 percent of the average of the highest three years of salary, the alternative method will be

used to calculate the annuity. The alternative method for calculating a disability annuity would be computed under the Civil Service System at 1.5 percent accrual rate for the first five years of service, 1.75 percent accrual rate for the next five years of service, and 2 percent accrual rate for service after ten years. Under CIARDS, the alternative method for calculating a disability annuity would be computed at 2 percent accrual rate for the entire term of Agency service.

Under Section 18(a), the disability annuity would be calculated at 40 percent of the average three highest years of salary, or the alternative method based on a 2 percent accrual rate, whichever is greater. In most instances, the disability annuity calculated by using 40 percent of the average highest three years of salary would be greater than alternative method for calculating disability benefits since an individual would have to serve 20 years in order for the alternative method to exceed 40 percent of his highest three years of salary. Thus, Section 18(a) will only affect a very small group of CIA employees in the CSRS who have more than 20 years of government service and who are disabled while serving overseas or who otherwise are performing qualifying service at the time of the disability.

The impact of Section 18(c) could be somewhat more pronounced. Under FERS, disability benefits are calculated at 60 percent of the average of the highest three years of salary for the first year of disability. For the following years of disability, benefits are calculated at 40 percent of the average of the highest three years of salary. There is also an alternative method of calculating a disability annuity based on the number of years of government service multiplied by the accrual rate. This figure is then multiplied by the average of the highest three years of salary. The alternative method can be used before age 62 if the amount a person would receive in disability benefits using this method exceeds the amount that an individual would receive in disability benefits by multiplying the average of the highest three years salary by 40 percent. The accrual rate under the alternative method would be 1 percent for individuals in FERS and 1.7 percent for individuals in FERS-Special. When an individual reaches age 62, his benefits are re-computed as if the person worked to age 62. Thus an individual disabled at age 50 with 20 years of government service would have his disability benefits recalculated as if he served 32 years in government upon reaching age 62. The law requires that upon reaching age 62, the disability annuity be recalculated by multiplying the accrual rate by the actual and projected years of government service. Thus the disabled employee described above would have his disability reduced from 40 percent of the average of the highest three years of salary to 32 percent of the average highest three years of salary.

Under Section 18(c), an individual in the FERS who is disabled overseas would have the alternative annuity calculated by using the 1.7 percent accrual rate. The higher accural rate will increase an employee's disability pay when he reaches age 62. In the example described above, the Agency employee described above who reaches age 62 will have his annuity recomputed so that it equals 46 percent of pay rather than reduced to 32 percent. CIA estimates that approximately one person per year not in CIARDS or FERS-

Special will be disabled while performing qualifying service and may take advantage of the additional benefits provided by Sections 501(a) and (c).

Sections 18(b) and (d) provide CIARDS and FERS-Special Category death in service benefits to qualifying survivors of those Agency employees is CSRS or FERS who are killed while performing qualifying service. Under CSRS and CIARDS, a survivor benefit equal to 55 percent of the annuity would be paid, and for FERS and FER-Special, a survivor benefit of 50 percent of the annuity would be paid.

To qualify for a survivor benefit under Section 18(b), an individual must have served 18 months of creditable service, not be designated CIARDS, died during a period of qualifying service, and been survived by a widow or widower, former spouse, and/or child or children. Similar requirements are contained in Section 18(d).

Under CIARDS and CSRS, an individual's survivor annuity is calculated at 40 percent of the average of the deceased employees highest three years of salary. The alternative method for calculating the annuity is to multiply the accrual rate by the number of years of government service. If the alternative method for calculating the survivor annuity exceeds 40 percent of the average of the highest three years of salary, the alternative method will be used to calculate the annuity. The accrual rates for CIARDS and CSRS are as stated above. Once the annuity is calculated, a survivor would be entitled to 55 percent of that annuity.

Under Section 18(b), the accrual rate for calculating a survivor benefit under the CSRS would be raised to 2 percent. This would make it more likely for an individual to use the alternative method for calculating a survivor annuity. In most instances, however, the survivor annuity calculated by using 40 percent of the average highest three years of salary would be greater than the alternative method for calculating a survivor annuity since an individual would have to serve 20 years in order for the alternative method to exceed 40 percent of his highest three years of salary.

Under FERS and FERS-Special, the only method used to calculate a survivor annuity is to multiply the number of three years of government service by the accrual rate. The accrual rate is 1 percent for FERS and 1.7 percent for FERS-Special for the first 20 years of creditable service.

Under Section 18(d), the accrual rate for calculating a survivor annuity for Agency employees in FERS, who meet the requirement contained in Section 18(d), would be raised from 1 percent to 1.7 percent. This would result in a higher survivor benefit being paid to the survivor of the FERS Agency employee. It is estimated that on an annual basis approximately two CIA employees in FERS will die while serving overseas and take advantage of the additional benefits provided pursuant to section 501(d).

Proposed Section 18(e) of the CIA Act establishes that the additional annuities paid as a result of this Section will be funded from the Civil Service Retirement and Disability Retirement Fund. This subsection also establishes that these annuities are paid under chapters 83 and 84 of title 5 United States Code, rather than under the CIA Act.

This section is effective on the date of enactment, and applies to Agency employees who retire on disability or die in service on or after such date.

TITLE V—DOD PERSONNEL AUTHORITIES IMPROVEMENTS

Section 501 authorizes the Secretary to accept and use gifts made to further the educational activities of the Defense Intelligence College. The Defense Intelligence College currently cannot take advantage of modest educational support opportunities presented by the private academic and corporate communities. This authority shall be exercised with close legal supervision to ensure that no standards of conduct issues would arise.

Section 502 amends provisions of 10 U.S.C. 1604(e)(1) to extend permanently the authority of the Secretary of Defense to terminate DIA civilian personnel of the Defense Intelligence Agency. This proposal augments the ability of DOD personnel systems to address the unique difficulties attendant to managing personnel problems in a classified environment, and is in keeping with the findings and recommendations of the National Academy of Public Administration (NAPA) study.

Section 503 modifies subsection (c) to Section 1430 of title 8 to allow members of the U.S. Army Russian Institute (USARI) staff who have defected or emigrated to the West to obtain U.S. citizenship while working at the school in Garmisch, Federal Republic of Germany. Section 1430 already allows several exceptions to the normal requirement of prior residence or physical presence within the United States for U.S. citizenship. The new subsection will allow members of the USARI staff to remain at the school to perform their teaching duties while at the same time accruing time toward U.S. citizenship. At the present time, a majority of the staff at USARI are stateless. Because of the location of the school, employees are unable to fulfill the residency requirement for U.S. citizenship. As defectors and emigres, the employees are guaranteed by U.S. citizenship. Their unique situation, their dedication, and their invaluable contribution to the United States Government justify an exception to the statutory requirement. This section would also provide an incentive to qualified defectors and emigres to consider USARI as an employment alternative without forfeiting their right to apply for U.S. citizenship.

Section 504 amends paragraph 1590(e)(1) of Chapter 81 of title 10, United States Code, which was enacted as Section 504 of the Fiscal Year 1987 Intelligence Authorization Act, by deleting the phrase, "during Fiscal Years 1988 and 1989,". The operative effect of the deletion is to grant the Secretary of Defense permanent special termination authority with regard to any civilian intelligence officer or employee of a military department under the circumstances detailed in paragraph 1590(e)(1). Deletion of the phrase, "during Fiscal Years 1988 and 1989," in paragraph 1590(e)(1) parallels Section 502 of this bill. Parity alone between DIA and the Military Services in managing their civilian intelligence personnel population dictates adoption of this proposal. It is hoped that the Secretary of Defense will never have to make use of this special termination authority; such authority should be invoked only as a last

resort. It is important that this authority be available, however, should an instance arise which necessitates such action.

Section 505 extends for one year the authority of the Secretary of Defense to pay a death gratuity to the survivors of any member of the armed forces on active duty assignment to a Defense Attache Office outside the United States who died as a result of hostile or terrorist action. The death gratuity would be the same as that authorized by section 1489(b) of Title 10, United States Code, payable to members of the armed forces and civilian employees of the Department of Defense who died from hostile or terrorist action while they were assigned to an intelligence component of the Department of Defense under cover or otherwise engaged in clandestine intelligence activities.

Congress first enacted this provision as section 704 of the Intelligence Authorization Act for Fiscal Year 1989. Subsection (c) of section 704 required the Secretary of Defense to submit a report to the Congress by March 1, 1989, setting forth the position of the Department of Defense with respect to making this provision permanent.

In response to this requirement, the Department of Defense provided the Committee with an interim report asking for additional time for the Department to formulate its position on this matter.

On the basis of this request, the Committee agreed to extend the authority for one additional year, and reimpose the requirement upon the Secretary of Defense for a report with respect to making this provision permanent.

TITLE VI—FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

Section 601 modifies subsection 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 by eliminating the requirement that only FBI employees in the New York Field Division who were "subject by policy and practice to directed geographical transfer or reassignment" could be eligible for periodic payments as part of the five-year demonstration project authorized by this provision. The original purpose of this language had been to limit the scope of participation in the demonstration project.

The FBI has advised, however, that this limitation has had a significant adverse impact upon the morale, retention and recruitment of FBI employees in the New York Field Division who were not subject to "geographical transfer or reassignment." Indeed, the Committee has received numerous complaints directly from the employees concerned with respect to this limitation. The great majority of these employees have full or part-time responsibilities to support FBI foreign counterintelligence activities.

In the interests of fairness and in improving the morale and retention rates among the affected FBI employees, the Committee believes that an adjustment to the demonstration project should be authorized to permit the inclusion of all FBI employees at the New York Field Division within the scope of this demonstration project.

The Committee also wishes to clarify its intent that the maximum lump-sum payment under subsection (a)(1) of section 601 be limited to $20,000 per employee or employee household. Thus, married employees of the New York Field Division, living in the same

household, would be limited to a maximum payment of $20,000 under the demonstration project.

The Committee continues to be concerned with the FBI's problems in recruiting and retaining personnel with specialized skills, especially needed for the FBI Foreign Counterintelligence Program. In a recent study of personnel management practices within the Intelligence Community submitted by the National Academy of Public Administration (NAPA), it was recommended, in fact, that the FBI as a whole be exempted, as certain other agencies in the U.S. Intelligence Community have been, from the personnel management regulations of the Office of Personnel Management. The rationale for such exemption would be to permit the FBI to establish its own system for personnel management that would make more cost-effective use of its limited personnel. The FBI faces growing burdens on the work force, including an increasing foreign intelligence presence in the United States.

The Committee believes this recommendation deserves serious consideration. Therefore, the Committee requests the Attorney General and the Director of Central Intelligence to submit, by March 1, 1990, a report to the Committees on the Judiciary of the House of Representatives and the Senate, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, concerning the desirability and consequences for national security of exempting the FBI from the personnel management regulations of the Office of Personnel Management, as recommended by the NAPA study. The Committee directs the FBI to provide such information and analysis as is necessary for this report.

In a related vein, the committee is interested in learning whether and to what degree there may be functions of the FBI which could be contracted to the private sector. The Department of Justice, through negotiations with the Office of Management and Budget and the Federal Bureau of Investigation, has projected a savings of 1,956 work years for FY 1989–1994 in the FBI by a shift of functions to the private sector for provision by contract under Circular A–76. Because of the unique sensitivity of FBI responsibilities, the Committee requests the Attorney General to provide to the Judiciary and Intelligence Committees, by December 31, 1989, a report outlining those functions of the FBI that the Department defines as commercial in nature which could be performed by private industry.

Section 602 is a "sense of the Congress" provision which addresses possible future increases in the ceiling on permanent positions at the United States Mission in the Soviet Union and at the Soviet Mission in the United States.

As communications and contacts increase between the two countries, and more citizens of each country visit or immigrate to the other, the demands upon the missions of each country increase, which can be expected to prompt demands of increases in the ceiling agreed to by the two countries on permanent staff positions.

In view of the counterintelligence concerns which attend such increases, the Committee believes it essential that such increases receive broad, high-level consideration within the Executive branch. Subsection (a) therefore provides that resolution of such issue

should be accomplished by the National Security Council based upon a determination that such increases are essential to the functioning of the U.S. Mission in the Soviet Union.

Further, subsection (b) provides that no such increases be approved without a concomitant commitment to provide additional resources to the FBI sufficient to cope with the increases in permanent staff positions. There must be a realization that increases in permanent positions at the Soviet Mission to the United States inevitably impact upon the responsibilities of the FBI. Without providing the FBI with additional resources to carry out such responsibilities, U.S. security is put at further risk.

The Committee requests that determinations and action under this provision be reported to the Congress in the annual reports to the Intelligence Committees required by Section 601(b) of the Intelligence Authorization Act for FY 1985.

Section 603 provides that the FBI shall be responsible for the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad who are themselves subject to U.S. law. This would include the employees of government contractors within the United States who are accredited to such missions. The FBI has jurisdiction to conduct such investigations of espionage under Title 18, United States Code, subject to the authority of the Attorney General. Section 603 is intended to ensure that the FBI exercises that jurisdiction in all such cases concerning personnel at U.S. diplomatic missions abroad, regardless of the concurrent jurisdiction that other agencies may have.

For example, the FBI shares jurisdiction over espionage cases with the military services which have concurrent authority to investigate violations of the Uniform Code of Military Justice (Title 10, United States Code, Chapter 47). Interagency agreements allow the military services to conduct such investigations of persons under their jursidiction. The Committee believes these arrangements are inappropriate for cases that arise at United States diplomatic missions abroad and that the FBI should be responsible for the investigation of all cases of espionage involving military personnel at such civilian installations.

Other departments and agencies also have concurrent authority to conduct security investigations of their own personnel and contractors who may be located at overseas posts. While it is not the intent of the Committee that the FBI take over responsibility for this type of investigation, it is the Committee's intent that, if such investigations should develop information indicating possible espionage involving foreign interests, the matter be referred to the FBI.

Section 603 provides that all departments and agencies shall report immediately to the FBI any information indicating a violation of the espionage laws of the United States by persons employed by or assigned to U.S. diplomatic missions. This requires reporting to the FBI the facts or circumstances which indicate a violation. For example, if this provision had been in effect in the Marine Security Guard espionage cases, initial indications of espionage would have been reported promptly to the FBI, rather than just to the State Department or the Navy or other agencies without criminal investigative jurisdiction (e.g., CIA). The State Depart-

ment would have immediately advised the FBI of the report from the Regional Security Officer at the Moscow Embassy of the conduct and statements indicating possible espionage, and the CIA would have immediately advised the FBI of the report from U.S. embassy officials in Vienna of the statements indicating espionage.

The FBI should provide guidance to the relevant departments and agencies with regard to the types of facts or circumstances which should be reported as indicating espionage violations.

Finally, Section 603 states that other departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations. Thus, the State Department, the military services, the CIA and other U.S. intelligence agencies are expected to provide personnel and other resources to assist the FBI in such investigations, consistent with their respective authorities and responsibilities. For example, in a case involving U.S. military personnel subject to the Uniform Code of Military Justice, it would be appropriate for the FBI to form a team that includes investigators from the relevant military service who are familiar with military legal procedures. In addition, CIA assistance to such FBI investigations abroad would be appropriate to the extent consistent with the statutory restrictions on CIA law enforcement powers.

The Committee intends that all investigative activity under this provision shall be directed by the FBI subject to the authority of the Attorney General and any guidelines or policies that the Attorney General may establish for such investigations, in consultation with the relevent departments and agencies, and with due regard for the CIA's responsibility under Executive Order 12333 to coordinate counterintelligence activities abroad and the DCI's responsibility under the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure.

This provision is intended solely to regulate interagency relationships, and shall not be construed to establish a defense in any matter based upon actions taken by the Department of Defense or any other department or agency with authority to investigate and dispose of allegations of espionage.

TITLE VII—GENERAL PROVISIONS

Section 701 authorizes the increase of appropriations authorized by the Act for salary, pay, retirement and other benefits for federal employees as necessary for increase in such benefits authorized by law.

COMMITTEE ACTION

On July 13, 1989, the Select Committee on Intelligence approved the bill and ordered it favorably reported.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred in implementing the provisions of this legislation.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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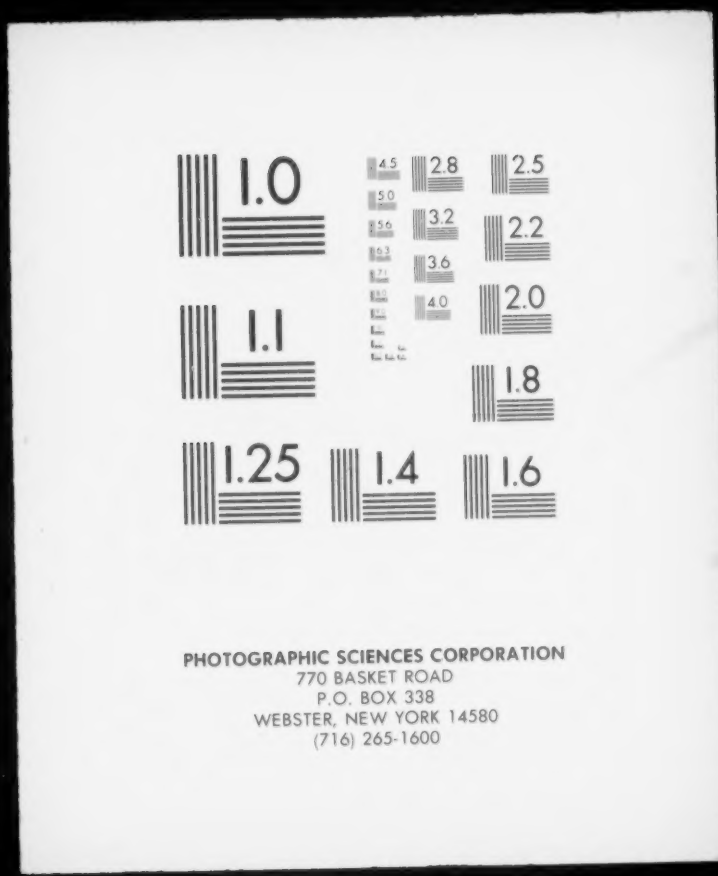

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